IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1787 of 1991

Kuruvammal @ Sheela Devi .. Appellant

-Vs-

1. M.Moses
2. M.Solemon (died)
3. M.Sargunam (died)
4. Rathinamani (died)
5. State Represented
by the Collector
Tirunelveli
6. The Tahsildar
Kovilpatti
7. The Superintendent of Police
Velloor, North Arcot District.
8. Jebamani
(8th respondent is brought on record as
LR of the deceased 2nd respondent vide
as per order of Court dt.9.4.03 made
in CMPs.17528 to 17536/02)
9. Seeniammal
10.Masilamani
11.Madathi Ammal
(RR9 to 11 brought on record as LRs
of the deceased 3rd respondent vide
as per order of Court dt.9.4.03 in
CMPs.17528 to 17536/02)
12.Kamalam
13.Navamani
14.Esther
(RR12 to 14 brought on record as LRs
of the deceased 4th respondent vide as
per order of Court dt.9.4.03 in CMPs
17528 to 17536 of 2002) .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 10.4.91 in A.S.No.35 of 1988 on the file of the Sub Court, Tuticorin, modifying the judgment and decree dated 29.1.1988 in O.S.No.390 of 1985 on the file of the District Munsif Court, Kovilpatti.

!For Appellant : Mr.R.S.Ramanathan

^For Respondents : Mr.R.Thirugnanam
for RR1 to 4, 8, 9 to 11 and 12 to 14

Mr.S.Sathia Murthy
Special Government Pleader (CS)
for RR5 to 7

:JUDGMENT

The first defendant is the appellant herein, who challenges the judgment of the first appellate Court, wherein the judgment of the trial Court in a suit for declaratory relief and consequential injunction was modified.

2. The plaintiffs sought for declaration that the plaintiffs being the kindreds of the deceased Vedanayagam, were also his legal heirs and also a declaration that the order of the Tahsildar, Kovilpatti, passed in Pa.Mu.23259/84 dated 28.2.1985 certifying that the first defendant is the sole legal heir of the deceased Vedanayagam, is null and void, and for consequential permanent injunction restraining the first defendant from receiving full amounts of family benefit fund, gratuity, family pension, provident fund or other amounts due to the deceased Vedanayagam from the defendants 2 and 4 and also restraining the defendants 2 and 4 from paying such amounts to the first defendant, alleging that the plaintiffs 1 to 3 and one Vedanayagam were brothers, while the 4th plaintiff was their sister; that they were all Christians; that Vedanayagam was working as Police Constable at Vanniyambadi; that he was married to the first defendant; that she eloped with one Swaminathan; that she filed a petition in M.C.No.55/79 for maintenance on the file of the Sub Divisional Magistrate Court, Kovilpatti, and the same was dismissed; that on appeal, it was set aside by the first appellate Court, and a maintenance of Rs.75/- per month was awarded to her; that on revision before the High Court, the quantum of maintenance was reduced to Rs.50/- per month; that Vedanayagam died in a road accident on 7.6.1984; that he died intestate; that all the plaintiffs were legal heirs of Vedanayagam along with the first defendant; that the plaintiffs were entitled to one half share in all the properties and assets of the deceased; that the first defendant was also entitled to one half share in the same; that the first defendant applied to the Tahsildar, Kovilpatti, for legal heir certificate; that the Tahsildar granted the same, certifying that the first defendant alone is the legal heir of Vedanayagam, which is against law and facts; that Vedanayagam nominated the plaintiffs as his heirs for the family benefit fund, etc.; that the first defendant was attempting to grab all the amounts under the family benefit funds, gratuity fund, provident fund, etc, and hence, there arose a necessity for the plaintiffs to file the suit.

3. The suit was contested by the first defendant stating that Vedanayagam died as a Hindu, and hence, nobody else was his heir, excepting the first defendant; that the plaintiffs were not kindreds; that they were not entitled to half share in the properties; that Vedanayagam died leaving behind him his widow only namely the first defendant; that the first defendant alone was to be determined as the direct lineal descent to get all such funds; that the plaintiffs were not the heirs of Vedanayagam; that after carefully

scrutinising the laws and regulations, the Tahsildar has issued the legal heir certificate in favour of the first defendant; that in the appeal made by the plaintifs before the District Collector, Kovilpatti, they have stated that the deceased Vedanayagam did not make any nomination under the family benefit scheme, and hence, the suit was to be dismissed.

4. The defendants 2 to 4 contested the suit by stating that during the life time of Vedanayagam, he made a nomination in favour of the first defendant to get the family benefit fund; that as per the Rules, the first defendant was entitled to get the funds; that the legal heir certificate issued by the third defendant, was valid in law, and hence, the suit was liable to be dismissed.

5. The trial Court framed the necessary issues, tried the suit and dismissed the same. On appeal by the plaintiffs before the first appellate forum, there was a modification of the findings of the trial Court, granting a relief only to an extent of half share in the family benefit fund, provident fund and gratuity as asked for in the plaint.

6. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether the respondents 1 to 4 are entitled to claim half share in the amounts payable under the Provident Fund Act, Gratuity, Family Benefit Fund on the ground of the deceased legal heirs?

(2) Whether the lower appellate Court is right in holding that the deceased died as a Christian in the absence of any proof to that effect?

7. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondents/plaintiffs and the learned Special Government Pleader for State on those contentions.

8. The plaintiffs came forward with the suit, specifically averring that they along with the first defendant were the legal heirs of the deceased Vedanayagam, and thus, the plaintiffs were entitled to get one half share in all the properties and assets of the said Vedanayagam, while the first defendant was entitled to one half share in those properties. The first defendant resisted the claim stating that she was the only legal heir of the deceased Vedanayagam, which is evident from the legal heir certificate issued by the Tahsildar; that she has been nominated by him to get the family benefit fund, and hence, she alone was entitled to get those funds. The stand taken by the State was that the said Vedanayagam, during his life time, nominated the first defendant to get the family benefit fund; that she was deserted, but not divorced, and as per the Rules, she was entitled to get the funds. The trial Court dismissed the suit on discussion of the evidence. The aggrieved plaintiffs have preferred the first appeal, the judgment of which is under challenge before this Court. A perusal of the judgment of the first appellate Court would make it abundantly clear that the first appellate Court has neither followed the mandatory provisions under Order 41 Rule 31 of C.P.C. nor framed the necessary points for determination nor appreciated the evidence, pertaining thereto nor given the necessary finding thereon.

9. The specific case of the plaintiffs was that the plaintiffs being the kindreds of the deceased Vedanayagam, were also his legal heirs; that the order of the Tahsildar, Kovilpatti, passed in Pa.Mu.23259/84 dated 28.2.1985 certifying that the first defendant is the sole legal heir of the deceased Vedanayagam is null and void; that the first defendant should be restrained from receiving full amounts of family benefit fund amount, gratuity, family

pension, provident fund or other amounts due to the deceased Vedanayagam from defendants 2 and 4; and that the defendants 2 and 4 should be restrained from paying such amounts to the first defendant. Necessary questions were framed by the trial Court. The evidence was also discussed, and a judgment was also rendered by the trial Court. Aggrieved over the finding recorded by the trial Court, the plaintiffs have taken it on appeal. In such circumstances, the law would expect the first appellate Court to frame the necessary points for determination pertaining to the pleadings, raised by the parties and the issues, framed by the trial Court and then to have a thorough discussion of the evidence thereon.

10. In KMM KADAR HUSSAIN VS. OMAR SELVARAJ AND TWO OTHERS (1997(I) CTC 559), the Division Bench of this Court has held thus:

"We have gone thorough the judgment of the learned single Judge. We are of the view that the judgment is defective, in that the learned Judge has not followed the provisions under Order 41 Rule 31, C.P.C. As rightly pointed out by the learned Senior Counsel for the appellant, it is also incumbent on the part of the Appellate Court to raise points for determination just to clear up the pleadings and focus the attention of the Court and of the parties on the specific and rival contentions, which arise for decision. One of us (AR. Lakshmanan, J.) sitting single, in Kannammal V. Kuppanna Gounder 1996 (II) MLJ 550, following a Division Bench of this Court in Visalakshmi Ammal V. Dhanalakshmi Ammal 1989 (2) L.W. 414 and for the reasons stated in the order, has set aside the judgment of the First Additional District Judge, Coimbatore and remitted back the matter to the said Court, to dispose of the appeal afresh on merits and in accordance with law and after affording opportunity to both the parties, within three months from the date of receipt of copy of the judgment.

The same view was taken by this Bench in the judgment dated 27.2.1997 rendered by us in Palanisami Pillai V. The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Madras-34 and another (LPA No.16 of 1993). In that case, similar contention was raised before us. While considering the said submission, this Bench has observed in paragraph 12 of the judgment as follows:-

"The object of Order XLI Rule 31 CPC in making it incumbent upon the appellate Court to raise the points for determination and to state reasons for the decision is to clear up the pleadings and focus the attention of the court and of the parties on the specific and rival contentions which arise for determination as also to offer the litigant parties an opportunity of knowing and understanding the grounds upon which the decision proceeds with a view to enable them to exercise, if they see fit, and are so advised, the right of second appeal conferred by Section 100 CPC. On a perusal of the judgment of the learned single Judge, it appears to us that the reasons for his findings would not satisfy Order XLI CPC. This Court being the first appellate Court, and being the final Court of facts, it is incumbent on it to consider all the evidence adduced by the parties in the case. Learned Single Judge has not even turned to the side of the plaintiffs who filed voluminous documents marked as Exs.A1 to A33. The parties to the suit or appeal, in our opinion, have a right to know the reasons that have led the Judge to his conclusions. The learned single Judge (Bellie, J.) has not considered any facts and

circumstances and the evidence adduced both oral and documentary by both sides, but merely recorded a finding by accepting the evidence of Dws 1 and 2 without himself bestowing any consideration thereon, it can surely be said that this is not a judgment in the eye of law. In the instant case, the judgment of the learned Subordinate Judge is exhaustive and well reasoned. The learned single Judge when he reversed the judgment, there should be enough material to show that the Court of appeal has considered it fully and formed its own opinion. In the present judgment, there is no discussion at all about the documentary evidence filed and marked as Exs.A1 to A33. The law imposes upon the Court of appeal the imperative duty and obligation of giving an adequate and satisfactory judgment such as is required by law and it is the duty to explain its reasons for so doing more especially when the Court of first instance has gone so fully into the facts and the reasons for the conclusions arrived at."

Learned Senior Counsel appearing for the respondents has no objection for setting aside the judgment and decree of the learned single Judge and remit the matter to another learned single Judge of this Court for consideration of the entire facts and circumstances and the evidence adduced by both the parties, both oral and documentary. As observed by us, the law imposes upon the Court of appeal the imperative duty and obligation of giving an adequate and satisfactory judgment as is required by law and it is the duty of the Court to explain its reasons for so doing, more especially when the Court of first instance has gone so fully into the facts and the reasons for the conclusions arrived at."

11. When an imperative duty and an obligation is cast upon the Court of appeal viz. the first appellate Court, it being the final court of facts, is duty bound to apply its mind independently afresh on the evidence adduced by the parties before the trial Court and to explain its reasons for the findings and conclusions arrived at. In the instant case, a reading of the impugned judgment would make it clear that the first appellate Court has failed to do so. Therefore, without going into the merits or otherwise of the rival contentions, put forth by the parties, what are all required to be stated is that the judgment of the first appellate Court has got to be set aside, in view of the non-observance of the mandatory provisions in not framing the necessary points for determination, not discussing the evidence adduced and not recording a correct finding on those points, and the matter has to be remitted to the first appellate Court.

12. In the result, this second appeal is allowed, setting aside the judgment and decree of the first appellate Court. The matter is remitted back to the first appellate Court with a direction to dispose of the appeal afresh on merits and in accordance with law and after affording an opportunity to both the parties within a period of two months from the date of receipt of a copy of this judgment. The parties shall bear their costs.

Index: yes
Internet: yes

To:
1. The Subordinate Judge
Tuticorin

2. The District Munsif
Kovilpatti
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/